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| **SALE UNDERTAKING**  DATED \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| **BY**  **Al Hilal Bank**  **(AS "PROMISSOR")**  **IN FAVOUR OF**  **[Customer]**  **(AS "PROMISSEE")** |
|  |

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This Sale Undertaking (the “**Undertaking**”) is issued on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,

by:

1. **AHB or Promissor:**

**Al Hilal Bank P.J.S.C**, established and existing under the laws of United Arab Emirates, having address at P.O.Box 63111, Abu Dhabi, United Arab Emirates ,Fax No......... (hereinafter referred to as the "**AHB**" or "**Promissor**", which expression shall include his successors, legal representatives and assigns).

in favour of:

1. **[Customer][[1]](#footnote-2) or Promissee:**

|  |  |
| --- | --- |
| For Individuals: | [●], [●] national, aged about [●] years, holding passport number [●], and residing at [●] |
| For Corporate Entity: | [●], a [●] company, established in accordance with the laws of the [●], having its registered address as P.O.Box [●], represented by its authorized signatory [●] |

(hereinafter to be referred as the "**[Customer]**", which term shall be construed so as to include its successors in title, permitted assigns and permitted transferees),

(each a "**Party**" and together the "**Parties**").

**RECITALS**

**WHEREAS:**

The Parties have signed a Common Terms Agreement dated as of the date of this Agreement (the “**Common Terms Agreement**”).

AHB has purchased the Asset pursuant to the Asset Purchase Agreement; and

The Promissor hereby provides this Sale Undertaking irrevocably undertaking to sell the AHB Share in accordance with the terms and conditions set out herein.

**NOW THEREFORE**, in consideration of the foregoing and the provisions set forth below, and subject to the terms and conditions set forth herein, the Promissor provides as follows:

DEFINITIONS AND INTERPRETATIONS

* 1. **Definitions:**

Except as otherwise expressly provided in this Undertaking, capitalised terms used in this Undertaking and not otherwise defined herein shall have the meanings given to such term in the Common Terms Agreement. In addition, the following terms have the meanings given below:

**"Agency Period**" shall have the same meaning as ascribed to such term under the Agency Agreement.

**"AHB Share”** means AHB's undivided percentage ownership interest in the Asset as of the date of this Undertaking, as specified in Schedule 4.

"**Asset**" means the property or asset described in Schedule 4

**"Cut-Off Date**" means six (6) months from the date of this Undertaking.

"**Exercised Interest**" shall have the same meaning as given to it under Clause 2.1 of this Undertaking.

"**Exercise Date**" means the date on which the relevant Exercise Notice is sent.

"**Exercise Notice**" means a notice in the form attached hereto as Schedule 1.

"**Exercise Price**" means the either the Partial Exercise Price or the Total Exercise Price (as relevant).

**"Outstanding AHB Share**" means the part of the AHB Share owned by AHB at the relevant point of time.

**"Outstanding AHB Share Amount**" means the cost incurred by the AHB in acquiring the then Outstanding AHB Share.

**"Partial Exercise Price"** shall have the same meaning as ascribed to such term under Schedule 3 hereof.

**"Sale and Purchase Agreement"** means the Sale and Purchase Agreement, substantially in the form set out in Schedule 2 hereto.

**"Sale Date"** means the date on which the Sale and Purchase Agreement shall be entered into and with relation to the Partial Exercise and the Total Exercise shall be date as mentioned in the Exercise Notice.

**"Termination Events"** means each of the Events of Default set out under Common Terms Agreement.

”**Total Exercise Price**" shall have the same meaning as ascribed to such term under Schedule 3 hereof.

1. **“Total Loss”** means the total loss or destruction of, or damage to the whole of AHB Share or the Outstanding AHB Share (as the case may apply) or any event or occurrence that renders the whole of the AHB Share or the Outstanding AHB Share (as the case may apply)permanently unfit for any economic use and (but only after taking into consideration the full use of any insurances or other indemnity granted by any third party in respect of the Asset repair or remedial work in respect thereof(.
   1. **Interpretation**

Unless a contrary indication appears, the Interpretation set out in the Common Terms Agreement shall mutatis mutandis apply to this Undertaking as if expressly set out herein.

UNDERTAKING

* 1. The Promissor hereby irrevocably and unconditionally grants this Undertaking to the Promissee and subject to the terms and conditions of this Undertaking, hereby irrevocably and unconditionally undertakes to sell all or part of AHB Share (as relevant) as envisaged here below (the "**Exercised Interest")**upon receipt of an Exercise Notice**:**
     1. part of the AHB Share for the Partial Exercise Price at any time during the Agency Period after the Cut-Off Date except in case of a Termination Event, upon the Promissee exercising its right on the relevant Exercise Date (the “**Exercise**”) under this Undertaking in accordance with Schedule 3 hereof (the "**Partial Exercise**"); and
     2. all of Outstanding AHB Share for the Total Exercise Price at any time during the Agency Period after the Cut-Off Date except in case of a Termination Event (the "**Total Exercise**").
     3. The Promissee shall not be entitled to exercise its rights under this Undertaking following occurrence of a Termination Event or on the Specified Dates mentioned determined in the Purchase Undertaking.
  2. **Exercise of Undertaking**

Subject to the terms and conditions of this Undertaking, the Promissor undertakes that, upon being requested to do so by the Promissee serving an Exercise Notice, it will sell the Exercised Interest to the Promissee on the relevant Sale Date, and will enter into the Sale and Purchase Agreement to give effect to such sale.

* 1. **Condition**

2.3.1 This Undertaking shall only be exercisable in the event of there being no Total Loss in respect of the AHB Share.

CONSEQUENCES OF EXERCISE OF RIGHTS

Upon the sale of the Exercised Interest::

* 1. ownership and possession to the Exercised Interest shall pass to the Promissor on an 'as is, where is' basis. Any Encumbrance created in favour of the Promissor shall continue to be valid and shall not be released until the payment of the Total Exercise Priceor the last Exercise Price as set out in the schedule 3 ( as the case may be).However, if AHB Share is not officially registered in the name of Promissor but only is mortgaged in its favour and the Promissee has purchased AHB Share in full, AHB shall only be obliged to release such mortgage; and
  2. upon the transfer of the Promissor’s ownership and possession to the Exercised Interest to the Promissee, pursuant to Clause 3, the Promissee shall have acknowledged that no condition, warranty or representation of any kind is or has been given by or on behalf of the Promissor in respect of the Exercised Interest or any part thereof, and accordingly the Promissee shall be construed to have confirmed that the Promissee has not relied on and, upon its taking delivery of the Exercise Notice, the Promissee will not rely on, any condition, warranty or representation of any kind made by the Promissor or any person on the Promissor’s behalf, express or implied, whether arising by law or otherwise in relation to the Exercised Interest (or any part thereof), including, without limitation, warranties or representations as to the description, suitability, quality, fitness for any purpose, value, state, condition, appearance, safety, durability, design or operation of the Exercised Interest or any part thereof, and the benefit of any such condition, warranty or representation (to the extent that they may be implied) shall be construed to have been irrevocably and unconditionally waived by the Promissee to the fullest extent permissible under applicable law.

INDEMNITY

The Promissee hereby undertakes to indemnify the Promissor (and each of its directors, employees and agents) and undertakes to hold the Promissor (and each of its directors, employees and agents) harmless from and against all actual costs, expenses, claims, demands, damages, judgments, orders or other sanctions incurred by the Promissor (in this Clause 4 referred to as **"Losses"**) in respect of any injury to or the death of any person or persons and/or any Losses relating to, or arising directly or out of, the Exercised Interest caused by the Promissee, including the condition, use, registration, or occupation of AHB Share at any time after the Promissor has passed the ownership and possession thereto to the Promissee in accordance with the terms hereof.

ASSIGNMENT, TRANSFER AND REVOCATION

* 1. The Promissor shall be entitled to assign or transfer any and all of its rights and obligations under this Undertaking to any third party without the prior written consent of the Promissee and shall be authorized to create any trusts or other beneficial rights in relation to this Undertaking .
  2. The Promissee shall not be entitled to assign or transfer any or all of its rights and obligations under this Undertaking to any third party without the prior written consent of the Promissor and shall not create any trusts or other beneficial rights in relation to this Undertaking but always subject to the rule and principals of Islamic Shariah.
  3. In executing this Undertaking, the Promissor hereby declares that this Undertaking shall only be revoked with the prior written consent of the Promissee.

NO PARTNERSHIP

Nothing in this Undertaking shall be construed as giving rise to any relationship of partnership between the Parties.

BENEFIT OF UNDERTAKING

This Undertaking shall be binding upon the Promissor and its respective successors, transferees and permitted assigns and shall inure to the benefit of the Promissee and its respective successors, transferees and assigns.

Notices

* 1. Any communication to be made under or in connection with this Undertaking shall be made in writing and, unless otherwise stated, may be made by fax or letter.
  2. The address and fax number (and the department or officer, if any, for whose attention the communication is to be made) of each Party for any communication or document to be made or delivered under or in connection with this Undertaking is that identified with its or his name in the paragraph 8.7 of this clause or, in each case, any substitute address, fax number, or department or officer as a Party may notify the other in writing, if a change is made by a Party by not less than five Business Days' notice.
  3. Any communication or document made or delivered by one person to another under or in connection with this Undertaking will only be effective:

1. if by way of fax, when received in legible form; or
2. if by way of letter, when it has been left at the relevant address or 5 Business Days after being deposited in the post postage prepaid in an envelope addressed to the relevant Party at the relevant address; and
3. if a particular department or officer is specified as part of its address details provided under this clause, if addressed to that department or officer.
   1. Any communication or document to be made or delivered to AHB will be effective only when actually received by the AHB and then only if it is expressly marked for the attention of the department or officer identified in this Undertaking (or any substitute department or officer as the Investment Agent shall specify for this purpose).
   2. Any notice given under or in connection with this Undertaking shall be in Arabic or English.
   3. All other documents provided under or in connection with this Undertaking shall be:
4. in Arabic or English; or
5. if not in Arabic, and if so required by AHB, accompanied by a certified Arabic translation and, in this case, the Arabic translation will prevail unless the document is a constitutional, statutory or other official document.
   1. For AHB : [●]

[●]

Fax: [●]

For the Customer: [●]

[●]

Fax: [●]

Partial invalidity

If, at any time, any provision of this Undertaking is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

Remedies and waivers

* 1. No failure to exercise, nor any delay in exercising, on the part of the Seller, any right or remedy under this Agreement shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights or remedies provided by law.
  2. Nothing in this Agreement shall prejudice or affect any of the rights or remedies of the Seller in respect of any other present or future security or guarantee or assignment for the Purchaser’s liabilities, or shall preclude the Seller from exercising any right assigned to it or enforcing all or any part of the Transaction Documents.
  3. Where two or more persons constitute the expression the “**Customer**”, all covenants, agreements, undertakings, stipulations, obligations, conditions and other provisions hereof and their liability herein shall be deemed to be made by and be binding and applicable respectively on them jointly and each of them severally and shall also be binding on and applicable to hispersonal representatives, successors and/or assigns jointly and severally.

GOVERNING LAW AND JURISDICTION

* 1. This Undertaking is governed by and shall be construed in accordance with the laws of the United Arab Emirates to the extent these laws are not inconsistent with the principles of Shariah, as set out in the Shariah Standards published by the AAOIFI and as interpreted by the Fatwa &Shariah Supervisory Board of the Promissee, in which case principles of Shariah will prevail.
  2. The courts of the United Arab Emirates shall have exclusive jurisdiction to settle any dispute arising out of or in connection with this Undertaking.However, this shall not restrict the Promissee from bringing an action against the Promissor before the courts of any other jurisdiction.

**IN WITNESS WHEREOF** this Undertaking is executed by the Promissor and is intended to be and is hereby delivered by it on the date specified above.

SCHEDULE 1  
FORM OF EXERCISE NOTICE

From: [Customer]

To: Al Hilal Bank PJSC

Date: [●]

Dear Sirs,

**Exercise Notice**

We refer to the Sale Undertaking granted by you in our favour dated [●] (the "**Undertaking**").

1. Unless otherwise defined herein, capitalised terms used herein shall have the same meaning given to them in the Undertaking.
2. This Exercise Notice is issued by the Promissee pursuant to the Undertaking and the undersigned is duly authorised to execute and deliver this Exercise Notice on behalf of the Promissee.
3. We hereby exercise your Undertaking and request you to sell ......% of AHB Share/ OutstandingAHB Share (the "**Exercised Interest**") through the entry into the Sale and Purchase Agreement on the terms and conditions contained therein.
4. In issuing this Exercise Notice, the Promissee draws the Promissor’s attention to the consequences of the Promissee exercising its rights as set out in the Undertaking.
5. The Exercise Price payable by the Promissee determined by the Promissor in accordance with the Undertaking, shall be AED [●].
6. The Sale Date shall be [●].
7. Attached is a copy of the agreed form of the Sale and Purchase Agreement which the Promissor should arrange to be executed and returned to us today.

8. Clauses 4,8, 9,10 & 11 of the Undertaking shall apply (*mutatis mutandis*) to this Exercise Notice as if the same were herein set out in full.

**IN WITNESS WHEREOF, the Promissee has executed and delivered this Exercise Notice as of the …………………….day of ……………………………………..**

For and on behalf of

[Customer] (as "**Promissee**")

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

By authorised signatory

[●]

SCHEDULE 2  
FORM OF SALE AND PURCHASE AGREEMENT

|  |
| --- |
| **SALE AND PURCHASE AGREEMENT** |
| **DATED** [●] |
| **BETWEEN**  **Al Hilal Bank (as "Seller")**  **AND**  **[Customer]**  **(as "Purchaser")** |

**THIS AGREEMENT** is made on this \_\_\_\_\_\_ day of ……………………………. by and between:

1. **Al Hilal Bank**, a company, established and existing under the laws of United Arab Emirates, with address at [●], (hereinafter referred to as the "**AHB**" or "**Seller**", which expression shall include his successors, legal representatives, transferees and assigns); and
2. [**Customer**] or **Purchaser[[2]](#footnote-3)**:

|  |  |
| --- | --- |
| For Individuals: | [●], [●] national, aged about [●] years, holding passport number [●], and residing at [●] |
| For Corporate Entity: | [●], a [●] company, established in accordance with the laws of the [●], having its registered address as P.O.Box [●], represented by its authorized signatory [●] |

(hereinafter to be referred as the "**[Customer]**", which term shall be construed so as to include its successors in title, permitted assigns and permitted transferees),

(each a "**Party**" and together the "**Parties**").

**RECITALS**

Pursuant to the Undertaking issued by the Seller in favour of the Purchaser (the “**Undertaking**”) and the exercise notice issued by the Purchaser to the Seller dated [•] (the "**Exercise Notice**"), the Seller as the owner of the Exercised Interest (as defined hereunder) sells and the Purchaser purchases, the Exercised Interest on the terms set out in this Agreement.

Now, therefore, it is hereby agreed as follows:

1. **DEFINITIONS**

Except as otherwise expressly provided in this Agreement, capitalised terms used in this Agreement and not otherwise defined herein shall have the meanings given to such terms in the Agency Agreement, the Undertaking and the Exercise Notice. In addition, the following terms have the meanings given below.

**"Agency Agreement"** means the Agency Agreement, dated [●] and entered into between the Seller as principal and the Purchaser as agent.

**“Exercised Interest**” means [all or part][[3]](#footnote-4) of the AHB Share that is the subject matter of this Agreement, which Exercised Interest is more particularly described under Annexure 1 hereto.

**"Exercise Price"** means AED [●] as mentioned in the Exercise Notice.

"**Sale Date**" means the date of this Agreement.

1. **TITLE**
   1. The Seller sells the Exercised Interest and the Purchaser purchases the Exercised Interest free from all liens, charges and Encumbrances and other rights exercisable by third parties created by or through or as a result of any action or inaction of the Seller but otherwise on an 'as is, where is' basis.
   2. The title to the Exercised Interest, together with its associated rights and obligations, shall pass to the Purchaser on the date of this Agreement since as per Shariah; the title is transferred from the Seller to the Purchaser automatically on signing this Agreement.
2. **WARRANTIES**

The Seller warrants that:

* 1. it has the right to sell and transfer the Exercised Interest to the Purchaser on the terms set out in this Agreement;
  2. there is no litigation, arbitration or administrative proceedings current or, to its knowledge, pending or threatened relating to the Exercised Interest; and
  3. it will, at its own cost and expense, execute and do (or procure to be executed and done by any other necessary party) all such deeds, documents, acts and things as the Purchaser or its assignee may from time to time require in order to vest the Exercised Interest in the Purchaser or its assignee or as otherwise may be necessary to give full effect to this Agreement.

1. **CONSIDERATION**

On the Sale Date, the Purchaser shall pay to the Seller, in freely and immediately available funds, the Exercise Price.

1. **SALE AND PURCHASE**

On the Sale Date:

* 1. subject to the performance by the Purchaser of its obligations under paragraph 5.2, the Seller shall pass possession of the Exercised Interest to the Purchaser; and
  2. the Purchaser shall have paid to the Seller, by way of freely and immediately available funds which are available to the Seller on the Sale Date, the Exercise Price, as the case may be, which fact is herewith confirmed.

1. **COUNTERPARTS**

This Agreement is executed in two counterparts, and each counterpart has the same effect as if the signatures on that counterpart were on a single copy of this Agreement.

1. **GOVERNING LAW AND JURISDICTION**
   1. This Agreement is governed by and shall be construed in accordance with the laws of the United Arab Emirates to the extent these laws are not inconsistent with the principles of Shariah (as set out in the Shariah Standards published by the Accounting and Auditing Organization of Islamic Financial Institutions and as interpreted by the Fatwa &Shariah Supervisory Board of the Seller), in which case principles of Shariah will prevail.
   2. The courts of the United Arab Emiratesshall have exclusive jurisdiction on any dispute arising out of or in connection with this Agreement. However, this shall not restrict the Promissee from bringing an action against the Promissor before courts of any other jurisdiction.

**This Agreement has been entered into on the date stated at the beginning of this Agreement.**

**EXECUTION PAGE OF THE AGREEMENT**

**Seller**

Al Hilal Bank

Represented by: [●]

In his capacity as: [●]

**Signature ……………………………**

**Purchaser**

[●]

Represented by: [●]

In his capacity as: [●]

**Signature ……………………………**

**ANNEXURE 1**

**EXERCISED INTEREST**

# Details of the Exercised Interest:

[●]%of the AHB Share.

SCHEDULE 3  
RELEVANT TABLES

**I EXERCISE DATE&Exercise Price**

For the purposes of this Undertaking and subject to clause 2, an Exercise Notice may be submitted by the Promissee to the Promissor on any Business Day during the Agency Period after the Cut-Off Date with respect to Partial Exercise or Total Exercise (as relevant) and each such date shall be referred to as an "**Exercise Date**":

**II EXERCISE PRICE DETERMINATION FORMULA**

The Parties agreed that the following formula shall be followed in the determination of the Exercise Price in respect of the Exercised Interest:

1. **Partial Exercise**

In case of Partial Exercise an amount equal to the Partial Exercise Price. For the purpose of this Section:

“**Partial Exercise Price**” means the aggregate of the Relevant Amount and the Relevant Profit.

“**Relevant Amount**” means the relevant acquisition cost incurred by the AHB in acquiring the subject Exercised Interest.

“**Relevant Profit**” shall have the following meaning:

* + - 1. If the Income (pursuant to the Agency Agreement) in respect of the relevant Income Payment Period is not paid then the Relevant Profit shall be equal to the product of (i) the Outstanding AHB Share Amount (prior to the envisaged exercise); (ii) [●] EIBOR plus the Margin, subject to a minimum of [●]% per annum;and (iii) (a) in case of the First Exercise, 180days, divided by 360; and (b) in case of all other exercises the number of days from the previous Sale Date in respect of a previous exercise until the intended Sale Date, divided by 360; and
      2. If the Income (pursuant to the Agency Agreement) in respect of the relevant Income Payment Period has been paid (the “**Relevant Income**”) and the same is equal to or greater than the Relevant Profit determined under (1) above then for the purpose of the subject calculation the Relevant Profit shall be equal to zero. However, if the Relevant Income is lesser than the determination of Relevant Profit set out under (1) above (the "**Calculation**"), then the Relevant Profit shall be the difference between the Calculation and the Relevant Income.

1. **Total Exercise**

In case of Total Exercise an amount equal to the Total Exercise Price. For the purpose of this Section:

**"Relevant Amount"** means the cost incurred by the AHB in acquiring the subject Outstanding AHB Share.

**“Relevant Profit”** shall be equal to the product of (i) the Outstanding AHB Share Amount (prior to the envisaged exercise); (ii) [●] EIBOR plus the margin, subject to a minimum of [●]% per annum;and (iii) the number of days fromthe previous Income Payment Period or the Sale Date in respect of a previous exercise (as the case may apply) until the intended Sale Date, divided by 360.

**“Total Exercise Price”** means the aggregate of the Relevant Amount and the Relevant Profit.

**SCHEDULE 4**

**PROPERTY AND THE ASSET**

**1) Details of the Asset**

[●]

**2) AHB Share**

[●]% undivided ownership interest in the Asset.

**SIGNATURE PAGE**

|  |  |
| --- | --- |
| **SIGNED BY THE PROMISSOR:**  **Al Hilal Bank** | **)**  **)**  **)**  **)** |

1. Delete as appropriate. [↑](#footnote-ref-2)
2. Delete as appropriate. [↑](#footnote-ref-3)
3. Delete as appropriate. [↑](#footnote-ref-4)